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A PAPER BY

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SOME INSULAR QUESTIONS.

THE last three years have brought upon us a swarm of questions which have excited much controversy. They have been disputed as if entirely new, while important precedents bearing on them seem to have been overlooked.

Even the recent oracular deliverances of the Supreme Court have failed to settle most of these things, so that at this late date there still seems room for discussion.

Up to 1898 we had never extended our territory by force. Even after the Mexican war what we took was paid for, inadequate as the price may appear. We paid also for the Philippines, but for many of our best citizens there is reason for lasting regret in the departure from our former policy, by which Porto Rico was taken as spoils of war. This now rises up to plague us. This island, with its dense yet alien population, raises the question whether under our system of government it is possible to carry on colonies.

This possibility has been furiously denied by the little group of violent anti-imperialists, and their opponents have been so accustomed to finding the men making up this group to be theoretically right in the various points which they have raised from time to time, that they have failed to offer any answer to this denial, though in our history many things could be brought out in favor of colonization.

To many people it will probably come as a surprise that the United States did once for more than a quarter of a century, and after the promulgation of the Monroe Doctrine, maintain without European protest a colony in the Old World, and that at the expiration of that time the United States allowed that colony peaceably to withdraw from its protection, and set itself up as an independent state, the sovereignty of which the United States later acknowledged, a sovereignty which still exists. So far as I know, the right of our Government to maintain such a colony was no more questioned during this period than its right to turn it loose afterward, and it can be safely asserted that no

one ever expected to see this particular colony ever become a part of the United States, or one of the United States, because it was under the protection of the United States.

It has been asserted that Liberia never was a colony of the United States, but in point of fact it certainly bore as intimate a relation to the Government of the United States as Connecticut or Rhode Island or Pennsylvania to Great Britain prior to 1776. Its history is curious. Its first effective start was obtained when, after failure of the Commissioners of the American Colonization Society to secure, as individuals, a satisfactory site, a vessel of the United States Navy, the "Alligator," was sent over to aid in the negotiations, and a deed for the site was extorted by her commander at the muzzle of his pistol from a most unwilling vendor in the shape of an African chief, who did not desire the profitable slave trade to be interfered with. It is true that this action on the part of Captain Stockton was hardly reprehensible, for it was only done when this same chief ordered Stockton and his sole attendant put to instant death, but these very vigorous measures by an officer of the United States Navy made the starting point of the new colony.

It is true that in his message to Congress of December 17th, 1819, setting forth his intention to establish an agency to look after the Africans recaptured from slavers, Monroe announced his purpose not to exercise any power founded on the principle of colonization, and that his agents were instructed not to exercise any such power, nor to go on any "other principle than that of performing benevolent offices," and that "you are not to connect your agency with the views or plans of the Colonization Society, with which under the law the Government of the United States has no concern." This limitation, however, in practice did not amount to much, for almost, if not quite without exception, during the whole period of dependence of Liberia, the position of Government Agent was given to the individual chosen by the American Colonization Society to manage the affairs of the colony, and more than once this agent marched at the head of troops raised by him as Colonial Agent to destroy French or Spanish slave-trading stations in the Liberian territory.

Moreover the Government furnished the money for transporting the first colonists to Africa, and they were convoyed by the

United States frigate "Cyane."[1] There is in the executive documents of the first session of the 28th Congress a long paper with reference to Liberia. From this it appears that the following instructions were given June 11th, 1822, to Capt. Spence of the "Cyane." "When you arrive on the coast of Africa, you will proceed for Cape Mesurado" (the same as Cape Montserrado), "and visit the Colonial establishment near this place, and afford all the aid and support in your power to Dr. Eli Ayres, the Agent of this Government, and the colonists." And later these instructions were added to as follows: "By recent accounts received from Cape Messurado on the coast of Africa, it appears that the American settlement there has been attacked by the natives, and the safety of the people endangered. Their situation is therefore such as requires immediate relief and protection. I wish you to remain near them until you shall be relieved or receive further instructions from this department, and afford to the settlement and to the Agent of the Government all the aid and protection in your power"; and again April 8th, 1823, "For the greater security of the settlement made at Messurado, be pleased to station at that place, as long as you shall continue on the coast of Africa, or while the settlement is endangered by the natives, as many marines as can conveniently be spared from the United States ship 'Cyane' under your command." From these instructions it appears how strong a direct interest was had by the United States Government in this colony, although it always recognized the colony as being under the government of the American Colonization Society, a condition of things very similar to the government of the colony of Plymouth by the Plymouth Company. It was, however, the fact of this government by the society which eventually led to the independence of Liberia when it came. It is highly honorable, both to the society and to the United States Government, that, although the Vice-President of the society was Secretary of State of the United States (Daniel Webster), when trouble arose with Great Britain, which necessitated the independence of Liberia, there was no attempt to juggle with this double relation. December 22d,

[1] See History of Liberia by J. H. T. McPherson, Johns Hopkins University Studies, 9th series, No. X, Baltimore, 1891, convenient but inaccurate.

1842, R. R. Gurley, the Secretary of the American Colonization Society, wrote to Daniel Webster, stating that "the late Secretary of State for the colonies of Great Britain, Lord John Russell assured me of the disposition of Her Majesty's Ministers to consider with candor the claims of Liberia, provided the subject was brought to its notice through the channels of our Government."

Two weeks later, on January 5th, 1843, Webster wrote to Minister Everett to make representations to Lord Aberdeen on the subject, saying: "I suggest that an inquiry may be instituted into the facts alleged, and that measures may be adopted for the prevention, in future, of any infraction of the rights of these colonists, or any improper interference, on the part of Her Majesty's subjects on the coast of Africa with the interests of the colonial settlement of Liberia." A little later, March 24th, 1843, Webster again wrote to Everett a letter in which he says, "Without having passed any laws for their regulation, the American Government takes a deep interest in the welfare of the people of Liberia, and is disposed to extend to them a just degree of countenance and protection"; but as the outcome of a direct inquiry from the British Government whether Liberia was a colony of the United States, Everett wrote December 30th, 1843, to the Earl of Aberdeen, "The policy of the United States, in reference to extra continental possessions, has not allowed them, had it been otherwise expedient to extend that kind of protection to the Liberian settlement, to which colonies are entitled from the mother country by which they are established. It has, in consequence, been compelled to rely on its intrinsic right to the common protection of all civilized nations; and, thus far, for the most part, without being disappointed."

This whole correspondence grew out of a dispute over the Liberian customs regulations. The British Government finally refused to consider binding on its subjects the regulations on trade imposed by the existing government of Liberia; arguing that the American Colonization Society, composed of mere private individuals, possessed no political powers, and that levying of imposts was the prerogative only of sovereign power, and that this sovereign power had not been assumed (as it might have

been) by the United States. It was on account of this difficulty that in January, 1846, the American Colonization Society recommended the colony of Liberia to declare itself independent, and July 26th, 1847, Liberia adopted a declaration of independence and a new constitution, which was ratified in September, and on the first Monday of 1848, under this was inaugurated Joseph J. Roberts as first President of Liberia. The new Government was recognized almost at once by England, France, Prussia and Belgium; but the slavery question, which had formerly prevented the United States Government from claiming the sovereignty over Liberia, interfered again to prevent its recognition by the United States Government until 1862, when slavery ceased to be a political issue.

So far we have considered only our practice with reference to colonization. Let us see what have been the accepted theories on this subject prior to the recent excitement. So far as my information goes, the first utterances on this question were in the Virginia legislature in 1800. The question then came up of a colony for "persons obnoxious to the state or dangerous to the peace of society," meaning free negroes, and the Governor (Monroe) was requested to communicate with the President of the United States with reference to a suitable situation.

Monroe seems to have waited till after Jefferson was inaugurated, but he then brought the matter up. On November 24th, 1801, Jefferson answered Monroe's letters of June 15th and November 17th, saying that "questions would also arise whether the establishment of such a colony within our limits and to become part of our Union would be desirable to the State of Virginia itself, or to the other States—especially those who would be in its vicinity.

Could we procure lands beyond the limits of the U S to form a receptacle for these people?"

Apparently Jefferson considered colonization lawful and expedient, for he makes no question of it in this letter, and offers to sound foreign powers for a location; and in 1802 he tried to obtain a suitable situation near Sierra Leone, and failing there tried again in Brazil, but the Louisiana purchase then suggested the possibility of a suitable location in the newly acquired territory, and during the exploration of this it was lost sight of.

In connection with the Louisiana purchase, however, there comes up the following very interesting note by Gouverneur Morris, whose opinion on the U. S. Constitution is of special value, as he made the draft of it. In writing December 4th, 1803, to Henry W. Livingstone, he remarks, "I perceive now, that I mistook the drift of your inquiry, and which is substantially whether Congress can admit, as a new State, territory which did not belong to the United States when the Constitution was made. In my opinion they cannot.

I always thought, when we should acquire Canada and Louisiana it would be proper to govern them as provinces, and allow them no voice in our councils. In wording the 3d section of the 4th Article, I went as far as circumstances would permit to establish the exclusion." Although a Federalist, Morris was a supporter of the Louisiana purchase, which adds weight to his opinion. The position of the Federalists opposed to Jefferson at this time is shown by the following extract from a speech in the House by Roger Griswold of Connecticut. "A new territory and new subjects may undoubtedly be obtained by conquest and by purchase; but neither the conquest nor the purchase can incorporate them into the Union. They must remain in the condition of colonies and be governed accordingly."

An opinion by John Marshall will perhaps also be of interest. He says in the course of a letter, dated Richmond, December 14, 1831, to R. R. Gurley, Secretary of the American Colonization Society, "It is undoubtedly of great importance to retain the countenance and protection of the General Government. Some of our cruisers stationed on the coast of Africa would at the same time interrupt the slave trade—a horrid traffic detested by all good men, and would protect the vessels and commerce of the colony from pirates who infest those seas. The power of the Government to offer this aid is not, I believe, contested." The whole letter, from which this is an extract, will be found interesting.

In February, 1843, again the House Committee on Commerce reported on African colonization as follows: "The idea of an American colony is not a new one. It is manifestly worthy of the highest consideration. The committee see nothing in

our Constitution to forbid it. We have establishments of this nature, though somewhat anomalous in the character of their dependence upon our Government, in Indian tribes which have been placed beyond the limits of the States in the purchased territory of the Union. The African settlements would require much less exercise of political jurisdiction, much less territorial supervision than is presented in the case of these tribes. They would require aid towards the enlargement of territory, occasional visitation and protection by our naval armament, a guarantee, perhaps, to be secured to them by the influence of our Government, of the rights of neutrality in the wars that may arise between European or American States. They would stand in need of the highest commercial privileges in their intercourse with this, the mother country." It will be noticed that this was written only a few weeks after Webster's letter to Everett quoted above, and probably before an answer was received. This report was laid upon the table without action, together with a bill accompanying it, intended to make Liberia a government colony, which was the earnest desire of the Colonization Society. The condition herein described of a country dependent on the United States, but not necessarily governed either by the Constitution of the United States or by the United States revenue laws, makes a very close parallel with the present condition of things in Porto Rico, since the establishment of free trade with the United States.

One other deliverance on this question seems to be worth citing on account of its extreme generality. In the address of the Hon. James M. Wayne, of Georgia, at the 37th anniversary of the American Colonization Society, after quoting Thomas Jefferson to the effect "that nothing is more to be wished than that the United States would themselves make such an establishment on the coast of Africa," he adds "no one doubts the constitutional right of our National Government to colonize either a newly discovered country where such a discovery has been made by our own ships, commercial or military; or that it may purchase territory for the same purpose.

It may do so by a direct purchase and transfer, under the form of treaty. It may be done under the war power, by treaty,

in anticipation of what our national defences may suggest to be proper, or we may take territory as one of the incidents of successful war. It may do so under the power to regulate commerce."

In view of all this, and I have sought in vain though somewhat cursorily for contrary expressions of early date, it would seem as if the doctrine of the inability of the United States to carry on foreign colonies were of very recent growth.

Another very difficult question which stood before us has apparently been removed within the last few weeks by the acceptance of the Platt amendment by the Cuban Constitutional Convention. Although the Monroe Doctrine *per se* was doubtless not over palatable to European statesmen in general, it seems unquestionable that most of their recent discontent with it has had very reasonable foundation in that by our maintenance of this kind of a protectorate we have been maintaining virtual anarchy. The question of the advisability of setting up one more irresponsible republic, whose sovereignty we pledge ourselves to maintain, has thus seemed a dubious one, especially where its citizens have had no better preparation for self-government than centuries of endurance of Spanish tyranny.

There is little question but that there is more of both real freedom and security in British Guiana than in any of the so-called republics of Latin America; and that it was a real calamity to the inhabitants of Venezuelan Guyana that the British were restrained by the Monroe Doctrine from including under their flag all the territory south of the Orinoco river.

That the existence of one dominating power in the American hemisphere has prevented wars of conquest in South America, and thus saved Europe from territorial disputes, is unquestionable, but perhaps for America alone the suffering by war has hardly been less since the Monroe Doctrine was first announced, owing to the endless revolutions, where there is no respect for the rights of minorities, and to the frequent wars between neighbors. Our position has also been made very difficult more than once by the tendency of these irresponsible governments to give offence to European nations, trusting to us to protect them from retaliation.

Yet I for one should be very loath to see Cuban senators and

representatives at Washington, where, it is to be feared, their usefulness would be similar to that of the Hawaiian delegate to the Kansas City convention, who at the time was said to have cast the deciding vote in the committee on platform by which the democrats were driven to support free coinage of silver. A middle course, therefore, by which we are able to interfere to prevent national bankruptcy, and offence against foreign powers, maintaining a kind of police patrol, seems a step in the right direction, for in view of the experience of all other communities escaping from Spanish dominion, no one can place much faith in the capacity of this people to maintain its dignity. If the Monroe Doctrine is to endure, it may become necessary to add to it similar control over the foreign policies of all the Governments of Central and South America north of Chili and the Argentine. But for their utter loss of credit it would probably be necessary also to lay restraints on their making loans abroad, for in nothing has their bad faith been more evident than in their failure to fulfill their promises to pay.

But our most difficult questions seem likely to grow out of the Philippines. That many of the inhabitants of these islands are not more civilized than our Indians, is apparent. It is doubtful whether the best of them are better qualified for self-government than the various Spanish-American populations, and in this instance we have a special complication, as compared with Porto Rico, in the possessions of the friars, whose greed is apparently justly charged with being the main cause of the rising against Spanish rule, which has been maintained against our authority.

As President Schurman has said, this is properly a question of real estate, but in a moment of weakness our Commissioners at Paris allowed it to become a political question as well.

The clause in the treaty of Paris which is responsible for this complication was an attempt on the part of the Spanish Commissioners to commit us to the support of the friars in their long contest with the Filipinos, in which the Spanish power had been unable to sustain them. It reads as follows:

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law

belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be."

This clause, which only explicitly states rights which would implicitly have existed without such stipulation, forms the basis of all the complaints about establishment of the Roman Catholic religion, and of our upholding the friars as against the Filipinos. Let us examine this in detail. To begin with, it can be argued legitimately that this stipulation supersedes the ordinary principles of law which otherwise would have held, and that we therefore have here an enabling clause permitting us by special treaty to do those things which are not expressly stipulated against.

This clause especially stipulates that we must not impair rights which by law belong to the peaceful possession of property. It therefore seems that those rights, which were even then in process of dispute by force of arms, are especially excepted from what would otherwise have been a general implication, and so are liable to be set aside in any composition between ourselves and these same Filipinos. At the date at which the treaty took effect the insurgents were in control of all the Philippine Islands outside of the American lines surrounding Cavite and Manila, so that very little would fail to fall under the exception. It should be noted that this dispute was between the friars and the insurgents, and in no wise between them and the Roman Catholic Church, in the communion of which most of them remain even while actively engaged in fighting against the religious orders, who appear to them, as they appear to many, if not most, Roman Catholics in the United States, as at best useless drones.

It seems as if a very summary method of dealing with this problem were here at hand, but there is a consideration of a different kind which should not be overlooked. This is as to the kind of rights by which the property of the friars in the Philippine Islands is held. The various monastic orders holding property in dispute in the Philippines are alluded to in the treaty

as ecclesiastical bodies. Ecclesia is the name under which the Church of Christ has been known to itself since the earliest times. It is remarkable in the teaching of Christ that formulas almost never appear, but that His teaching was by instances from which principles could be developed. When, therefore, He said that "Man was not made for the Sabbath, but the Sabbath for man," he laid down a principle which must be accepted as fundamental, especially in regard to ecclesiastical bodies, and one of which a court of law should take cognizance, namely, that the fundamental law of every religious association is that it is to act for the benefit of the people among whom it exists.

The largest estates in these islands belonging to religious orders are held by the Augustines, an order of mendicant friars for whom the special rule of their order is poverty. The same rule holds for the Dominicans and the Franciscans, who also have large possessions there, and, as far as has yet appeared, for all the other orders represented in the Philippines. It therefore appears that the fundamental rule of their orders as well as the general principles of ecclesiastical institutions, that they exist for the benefit of mankind, and not mankind for them, forbids their holding property for their own benefit, and it naturally follows that the immense riches held by them are trust funds for the benefit of the Philippine islanders.

It is very interesting to see by the article on the formation of the Philippine people in the number of the YALE REVIEW for May, 1901, that Philip II picked out these religious orders to be sent to the Philippines to convert the natives, because, owing to their vows of poverty and obedience, he thought that they would show greater disinterestedness and zeal. It is even related of the Franciscans that in the early days in the Philippines they practiced strict poverty and invariably went barefoot.

The Philippine rising seems to have been originally an armed protest (no other being heeded by Spanish courts under ecclesiastical domination) against conversion by the friars of trust funds placed in their hands. It is, moreover, believed that much of this property has been obtained as death-bed gifts by threats of refusal of absolution and other processes which our courts would instantly qualify as undue influence, and that a

large proportion of the proceeds has not even been spent in the Philippines, but has been sent to Rome as "Peter's pence," to maintain there the splendor of the papal court. Any one who has seen the wealth of jewels and pageantry at a Roman religious festival will recognize one reason why of independent Roman Catholic countries hardly one in four is thoroughly solvent, and why those which are, have suppressed most of the monasteries existing in them.[1]

As under the treaty the question becomes one of the "property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals of whatsoever nationality such individuals may be," let us see what is the law covering ecclesiastical bodies.

Some eleven years ago the Supreme Court of the United States finally decided the case of Romney versus the United States. This case arose out of misuse of funds and powers by an ecclesiastical organization which came into our jurisdiction, from under what was virtually Spanish law, by the cession of territory to us after the war with Mexico; so that it has some curious points of correspondence with the present case. It should likewise be noted that the case was one which involved no questions of religious belief or creed, but that it grew out of the misdeeds of an ecclesiastical corporation which had showed itself at least as soulless as the most grasping trust.

As this decision bears also on the question of government of acquired territory, and as many points, which by virtue of this decision became law, are entirely unfamiliar to most laymen and even to many lawyers, perhaps it may be well to quote in full the carefully prepared syllabus of it, drawn up under the eye of one of the judges who concurred in the decision, and published in Vol. 136, United States Reports. It is as follows:

[1] Solvent—Belgium, Bolivia, Chili, France and Mexico; in a dubious condition—Austria, Italy and Spain; having committed evident acts of insolvency in the last decade—The Argentine Republic, Brazil, United States of Columbia, Costa Rica, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Paraguay, Peru, Salvador, San Domingo, Uruguay and Venezuela.

"Syllabus of Romney vs. United States."

The Church of Jesus Christ of Latter Day Saints was incorporated February, 1851, by an act of assembly of the so-called State of Deseret, which was afterwards confirmed by act of the territorial legislature of Utah, the corporation being a religious one, and its property and funds held for the religious and charitable objects of the society, a prominent object being the promotion and practice of polygamy, which was prohibited by the laws of the United States. Congress in 1887 passed an act repealing the act of incorporation, and abrogating the charter; and directing legal proceedings for seizing its property and winding up its affairs: held that

(1) The power of Congress over the territories is general and plenary, arising from the right to acquire them, which right arises from the power of the government to declare war and make treaties of peace, and also, in part, arising from the power to make all needful rules and regulations respecting the territory or other property of the United States;

(2) This plenary power extends to the legislatures of the Territories, and is usually expressed in the organic act of each by an express reservation of the right to disapprove and annul the acts of the legislature thereof;

(3) Congress had the power to repeal the act of incorporation of the Church of Jesus Christ of Latter Day Saints, not only by virtue of its general power over the Territories, but by virtue of an express reservation in the organic act of the Territory of Utah of the power to disapprove and annul acts of the legislature;

(4) The act of incorporation being repealed, and the corporation dissolved, its property, in the absence of any other lawful owner, devolved to the United States, subject to be disposed of according to the principles applicable to property devoted to religious and charitable uses; the real estate, however, being also subject to a certain condition of forfeiture and escheat contained in the act of 1862;

(5) The general system of common law and equity, except as modified by legislation, prevails in the Territory of Utah, including therein the law of charitable uses;

(6) By the law of charitable uses, when the particular use designated is unlawful and contrary to public policy, the charity property is subject to be applied and directed to lawful objects most nearly corresponding to its original destination, and will not be returned to its donors, or their heirs or representatives, especially when it is impossible to identify them;

(7) The Court of Chancery, in the exercise of its ordinary powers over trusts and charities, may appoint new trustees on the failure or discharge of former trustees; and may compel the application of charity funds to their appointed uses, if lawful; and by authority of the sovereign power of the state, if not by its own inherent power, may reform the uses when illegal or against public policy by directing the property to be applied to legal uses, conformable, as near as practicable, to those originally declared;

(8) In this country the legislature has the power of *parens patriae* in reference to infants, idiots, lunatics, charities, etc., which in England is exercised by the crown; and may invest the court of chancery with all the powers necessary to the proper superintendence and direction of any gift to charitable uses;

(9) Congress, as the supreme legislature of Utah, had full power and authority to direct the winding up of the affairs of the Church of Jesus Christ of Latter-Day Saints as a defunct corporation, with a view to the due appropriation of its property to legitimate religious and charitable uses conformable, as near as practicable to those to which it was originally dedicated. This power is distinct from that which may arise from the forfeiture and escheat of the property under the act of 1862;

(10) The pretence of religious belief cannot deprive Congress of the power to prohibit polygamy and all other open offences against the enlightened sentiment of mankind."

The far-reaching character of this decision becomes the more evident when we consider that the practice of polygamy was only made an offence against the laws of the United States in 1862, years after the charter of this Church had been confirmed by the territorial legislature of Utah, and that this charter was not repealed till twenty-five years after the law prohibiting polygamy, which was not mentioned as an object of the society in the charter, though there is a veiled allusion to it. Moreover, the

property of this corporation, as shown by the defence, did not even stand in its own name, but was taken by the United States authorities out of the hands of trustees to whom it had been transferred in anticipation of hostile moves. It was even argued by the defence that it never had acquired property in its own name.

The last five heads of the syllabus particularly interest us with their doctrine concerning religious and charitable funds. The statement under the sixth head, showing that funds may be diverted to cognate uses where the particular use designated for such funds "is unlawful and contrary to public policy," is immensely strengthened by the statement under the seventh head that the courts may appoint new trustees where old ones have been unfaithful, and may compel the application of funds to their uses if lawful, and "may reform the uses when illegal *or* against public policy." There is very little question that maintenance of monastic establishments is much against our present public policy, which is to pacify the Filipinos, so that by our law a plain path seems open for the use of this great endowment for schools (as was suggested by the Supreme Court for the funds of the Mormon Church), asylums and hospitals in the Philippine Islands. Separate provision was made under the Spanish rule for the maintenance of public worship, so that the Roman Catholic Church as such has no valid claim on these funds, and it is again contrary to our public policy to have any connection with religious affairs except as morals are concerned, so that they cannot be used for any sectarian purposes. Unquestionably some provision ought to be made out of them for such monks as have become incapacitated for earning their living and desire to continue a monastic life, but no new novices ought to be admitted to take the places of those who die. Such provision was made when Henry VIII abolished the monasteries in England, and the cry of spoliation which arose from his action had little justification. Study of the grants of abbey lands shows that they were generally so encumbered with pensions to former inmates of the convents as to have yielded scarcely any net revenue to the nominal owners for many years.

Similar arrangements were also made when the Swiss convents were suppressed between 1840 and 1848.

Another strong point comes out under the tenth head, namely, that "the pretence of religious belief cannot deprive Congress of the power to prohibit polygamy and all other open offences against the enlightened sentiment of mankind."

It would be easy to show by the action of the most enlightened countries that the monastic orders are such an offence, though one which has been frequently tolerated, but still one which has been put down more than once in nearly all Roman Catholic countries.

In 1538 a committee of cardinals appointed by Pope Paul III to look into the troubles which had just brought on the Reformation, reported as follows:

"Another abuse which needs correction is in the religious orders, because they have deteriorated to such an extent that they are a grave scandal to seculars, and do the greatest harm by their example. We are of opinion that they should all be abolished, not so as to injure anyone, but by forbidding them to receive novices; for in this wise they can be quickly done away with without wrong to any one."

The Pope was not bold enough to follow this advice, but in 1780 Joseph II dissolved the mendicant orders in Austria, and suppressed the greater number of convents throughout his dominions.

All the convents in France were suppressed between 1790 and 1792; little Portugal dissolved about five hundred in 1834, and early in the next year Spain dissolved about nine hundred, while a second law of the same year abolished the rest. It seems a fair question whether those in the Philippines have not been existing merely by tolerance since that date. Between 1840 and 1848 they were almost exterminated in Switzerland, and the restoration of old convents and the founding of new ones were forever forbidden by the new constitution adopted in Switzerland in 1848.

Finally in Sardinia the convents were suppressed in 1866, and their funds confiscated by law; and in 1873, shortly after the complete unification of Italy, this action was extended to the whole kingdom, resulting in the closing of a total of 2,255 such institutions. The mixed feelings with which such action was

regarded, even by the head of the Church, was well expressed in the remark concerning it by Pope Pius IX to an English Roman Catholic bishop, "It was the devil's work; but the good God will turn it into a blessing, since their destruction was the only reform possible to them."

They were abolished early in the XIXth century in Mexico, and by sundry other Latin American countries. It is a curious fact that to-day their strongest hold is in Protestant countries.

In the opinion by Justice Bradley, which is summed up in the syllabus given above, there are a number of points worthy of being quoted in detail. He says for instance on page 48, "It is a matter of public notoriety that the religious and charitable uses intended to be subserved and promoted are the inculcation and spread of the doctrines and usages of the Mormon Church—a crime against the laws and abhorrent to the sentiments and feelings of the civilized world—it is contrary to the spirit of Christianity, and of the civilization which Christianity has produced in the western world. The question, therefore, is, whether the promotion of such a nefarious system and practice, so repugnant to our laws and to the principles of our civilization, is to be allowed to continue by sanction of the government itself."

The enforcement of celibacy is to be sure not so immediately dangerous to the welfare of the community as that of polygamy, but the maintenance in idleness of large numbers of men under such rules as those of the monastic orders, as we have seen above, has been regarded by almost every Roman Catholic government in Europe as so dangerous as to make their suppression advisable, so that we can hardly be criticised if, following the precedent set by Spain itself, we treat these organizations as repugnant to our laws and to the principles of our civilization.

In speaking of the possessions of the Mormon Church, Judge Bradley goes on to say, "The property in question has been dedicated to public and charitable uses. It matters not whether it is the product of private contributions, made during the course of half a century, or of taxes imposed upon the people, or, etc., ... the principles of the law of charities are not confined to a particular people or nation, but prevail in all civilized countries pervaded by the spirit of Christianity. They are found imbedded in the

civil law of Rome, in the laws of European nations, and especially in the laws of that nation from which our institutions are derived. A leading and prominent principle prevailing in them all is, that property devoted to a charitable and worthy object, promotive of the public good, shall be applied to the purposes of its dedication, and protected from spoliation and from diversion to other objects. Though devoted to a particular use, it is considered as given to the public, and is, therefore, taken under the guardianship of the law. If it cannot be applied to the particular use for which it was intended, either because the objects to be subserved have failed, or because they have become unlawful and repugnant to the public policy of the state, it will be applied to some object of kindred character, so as to fulfil in substance, if not in manner and form, the purpose of its consecration." The words of the opinion just cited, "because the objects to be subserved have failed, or *because they have become unlawful and repugnant to the public policy of the state,*" show how great a control is exercised by the courts over such funds, since their destination may be altered not only because their object was originally repugnant to our policy, but also if, in consequence of some future change in our policy, this object should become repugnant to its principles. In support of this opinion Judge Bradley cites not only Lord Chief Justice Wilmot of England as to the "distinction made between superstitious uses and mistaken charitable uses. By mistaken I mean such as are repugnant to that sound constitutional policy which controls the interest, wills and wishes of individuals when they clash with the interest and safety of the whole community . . . . But where property is given to mistaken charitable uses, these courts distinguish between the charity and the use . . . . varying the use."

The court quotes also Domat, the French jurist, as saying, "If a pious legacy were destined to some use which could not have its effect, as if a testator had left a legacy for building a church for a parish, or an apartment in an hospital, and it happened, either that before his death the said church, or the said apartment, had been built out of some other fund, or that it was noways necessary or useful, the legacy would not for all that remain without any use; but it would be laid out on other works of

piety for that parish, or for that hospital, according to the directions that should be given in this matter by the persons to whom this function should belong." This quotation of foreign law, which by its incorporation in this important decision obtains the force of law in our country, seems to have a most important bearing.

Probably few would be found, even among enlightened Roman Catholics, to maintain that in view of the pronounced prejudice against them in the Philippine Islands, the monasteries there were either necessary or useful. This quotation is also important as showing that these funds, thus placed in the hands of the monastic orders, do not properly become the property of the orders at large, so that, in case of suppression of the monasteries, the funds should not be withdrawn by the generals of these orders for use either at Rome, or in other parts of the world, but should be used for other public uses in the Philippine Islands themselves.

The opinion goes on to state as follows: "By the Spanish law, whatever was given to the service of God became incapable of private ownership, being held by the clergy as guardians or trustees; and any part not required for their own support was devoted to works of piety, such as feeding and clothing the poor, supporting orphans, marrying poor virgins, redeeming captives and the like." From this it plainly appears that, even by Spanish law, in case the orders are forbidden to introduce new novices, as was suggested by the committee of cardinals to Pope Paul III, all the funds which would thus be no longer necessary for the support of the monks, would become available for such public purposes as the Government should see fit to apply them to, and this law also, by incorporation in this decision, has become binding on our courts. Moreover, it certainly lies within the province of the civil power to prevent the perpetuation of orders of mendicants of any kind in the same manner in which it is at liberty to suppress mendicants of any character. It seems, therefore, as if the sole question of real difficulty in this matter lay in the property obtained by the orders through undue influence. By the Spanish law just quoted it is plain that the intent was to enable the clergy to maintain their hold on their gains, no matter how ill-gotten, but it is also evident that our courts

would distinguish in a very different manner from the Spanish courts, with reference to what had actually become the property of the Roman Catholic orders, and what was merely unjustly in their possession. In this decision, with reference to the property of the Mormon Church, the court made separate rulings on the personal property and on the real estate. It made no question that the personal property, being indistinguishable from other personal property, should be forfeit to the United States, but with reference to real estate it made an important distinction, considering the lands forfeit, but that they became forfeit to the United States because the United States was the original grantor.

It seems then as if a way were open for individual Filipinos from whose ancestors, direct or collateral, gifts of lands had been extorted by undue influence, to recover these by action in the courts. Moreover, it seems very improbable that there would be any complaint by outside parties in case the United States should extend great facilities to all claiming as representatives of those having made gifts to the monastic orders under duress, temporal or spiritual. Probably nothing would go further toward immediate pacification of the entire Filipino people than the idea that by immediate submission they would stand a chance of recovering rights from which they feel themselves defrauded, rights which would be forfeited, if not presented before our courts prior to a given date.

N. T. Bacon.

Peacedale, R. I.